

**DEQ – Air Quality Division
SUMMARY OF NEGOTIATED RULEMAKING MEETING
DAIRY PERMITTING
DOCKET 58-0101-0502
May 9, 2005 – Twin Falls, Idaho**

PARTICIPANTS

Anthony, George - Citizen
Arrington, Paul - Citizen
Bauer, Martin – DEQ
Beard, Phyllis – Amalgamated Sugar
Bilderback, John – Idaho Dept. of Agriculture
Carlson, Rich – Idaho Rural Council
Conder, Jim - Citizen
Delorey, Dean – Amalgamated Sugar
Dunlop, Michelle – Times News
Hayes, Justin – Idaho Conservation League
Knight, Lloyd – Idaho Cattle Association
Kronberg, Lisa – DEQ–Deputy Attorney General
Louks, Bruce - DEQ
McClure, Ken – Givens, Pursley
McLean, Lauren – Idaho Conservation League
Naerebout, Bob – Idaho Dairyman's Association
Olmstead, Brent – Milk Producers of Idaho
Patten, Marv – Idaho Dept. of Agriculture
Sheffield, Ron – University of Idaho
Simon, Mike – DEQ
Skromyda, Mike – Amalgamated Sugar
Smith, Ed – Citizen
Stouder, Bill – Idaho Dairyman's Association
Thompson, Matt – AgTec
Heitman, Phyllis – DEQ (Admin Support)

RULE STRUCTURE

Martin Bauer opened the meeting. Lisa Kronberg presented the research she had done on permitting programs in Oregon and North Carolina and discussed a pro/con analysis of general permits (see attachments). Brent Olmstead suggested looking at the Texas Permit by Rule (PBR) rules also. The rulemaking group continued the discussions started at the April 12 meeting regarding which of the three types of permit/rule structures would be the most effective for dairies. Ms. Kronberg summarized the key points of PBRs and general permits.

PBR

- Permit and Best Management Practices (BMPs) are part of the rule
- Facility registers with DEQ, including basic ownership/facility information
- Facility must demonstrate in registration how BMPs will be applied
- Future changes in BMPs or values would require the original PBR to be re-negotiated

General Permit

- Rule would state DEQ has the authority to issue a general permit
- DEQ and stakeholder representatives would draft the permit

- Draft permit would go to public comment; comments would be considered by development group
- Second draft of permit would go to public comment
- Future changes in BMPs or values would not require a re-negotiation of permit
- Permit could contain language allowing for an annual review of BMPs and values

Ken McClure said the industry representatives think a PBR would be the best choice but have not made a final decision. Mr. Bauer said DEQ prefers the general permit since it gives DEQ the most flexibility. Ms. Kronberg suggested that different BMPs could be tied to different structure types. The committee does not seem to think a general rule is a viable option.

Ed Smith wondered, if a facility meets all the criteria and reaches the appropriate numerical value, would there be an opportunity for public input on a facility regardless of which type of rule/permit was involved. Mr. Bauer said DEQ could hold a hearing for the air quality portion of the facility, but public input on the land use aspects would be a local zoning issue.

After general discussion, it was agreed Bill Eddie, Lisa Kronberg and Ken McClure would meet to select the most acceptable structure option and begin drafting rule language. Draft language should be sent to Mr. Bauer by June 1 and forwarded to the entire committee prior to the next meeting.

BEST MANAGEMENT PRACTICES

Ron Sheffield and Matt Thompson presented a BMP scoring table entitled "Ammonia Control Practices for Idaho Dairies" and described each component and point value. A point value of one was applied to ineffective practice and a value of twenty represents the most effective practice (see attached). They said this list of BMPs only addresses ammonia and cautioned that a single BMP will not have the same effectiveness for all compounds. Dr. Sheffield added that the point values assume the BMP would receive full points if all available material goes through the process. A value of twenty assumes a fifty percent or greater ammonia reduction. Dr. Sheffield added that none of the BMPs listed should exacerbate other air quality components. Committee members asked that these assumptions be noted in the table.

Bob Naerebout reminded the committee that industry's agreement with the Idaho Conservation League only addresses ammonia.

Ms. Kronberg said it would be a good idea for the rule to include a definition for each BMP and what criteria must be met to reach the designated value.

After discussion, the group decided several of the BMP values need more research and possible adjustment, specifically, vegetative or wooded buffers, management of dietary protein, soil injection, and incorporation of manure.

SURVEYS TO VERIFY BMP VALUES

The committee members agreed the BMP values need to be verified and finalized; Mr. Bauer suggested members of the committee conduct a survey of several existing dairies using the point values discussed above. There was discussion about which rulemaking members would be part of the survey team. Industry representatives expressed concern about having ICL take part in certain on-site surveys. The committee was unable to reach consensus. Mr. Bauer asked the work group assigned to review rule structure to also discuss this issue. He stated that if that group is unable to come to a decision, he will designate DEQ staff and Dr. Sheffield to conduct the surveys.

The work group should provide their input to Mr. Bauer by June 1; he will notify other committee members how the surveys will be handled.

SUBMITTALS/APPROVALS - COMPLIANCE

Mr. Bauer suggested the committee postpone discussion of submittals and approvals until a structure is agreed upon.

He said DEQ staff has had preliminary discussions with Dept. of Agriculture (ISDA) regarding ISDA doing air quality inspections in conjunction with their regular dairy inspections. DEQ does not have sufficient staff to inspect dairies on a regular basis. Mr. Bauer envisions that when a facility submits an application stating it has "x" BMPs and "x" values, ISDA would inspect for those BMPs and values and report their findings to DEQ. If the inspection report shows the facility is not operating within the correct range, DEQ will make an appropriate compliance decision. DEQ realizes facilities need flexibility to choose BMPs but only to the extent they meet targeted values. Facilities must demonstrate compliance and will be expected to routinely track their BMPs. Mr. McClure added that the facilities do not expect to file reports with DEQ and that compliance monitoring should be done through the inspection process.

Marv Patten stated the process would be more effective if a single agency conducted the inspection and determined compliance. Prior to the next meeting, DEQ and ISDA will discuss how this process might work and report to the committee.

TEMPORARY/PROPOSED RULE VS PROPOSED

Mr. Bauer said he is re-considering his decision to present this rule as a proposed rule and is contemplating whether a temporary/proposed rule would be more appropriate. Changing the rule to a temporary one would require approval by the Governor's Office and re-noticing in the Administrative Bulletin. The permit fee component, however, cannot be done through the temporary rule process. DEQ staff will do more research and discuss this more at the next meeting.

ACTION ITEMS

- Representatives from ICL, DEQ and industry will meet to (1) discuss structure type and begin drafting language; (2) determine how to conduct on-site survey of dairies; and (3) report to Mr. Bauer by June 1
- DEQ/ISDA discuss inspection/compliance process and reach agreement about ISDA participation
- Research changing rule to temporary/proposed; research fee aspect

NEXT MEETING AND AGENDA

The next meeting is scheduled for June 10, 2005, 9:00 a.m.-noon, at the DEQ Office in Boise. Agenda will include discussion of

- Rule Structure – Report from Work Group
- Best Management Practices - Dairy Surveys
- Inspection/Compliance Process
- Temporary/Proposed Rule